COURT-I

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Original Jurisdiction)

ORIGINAL PETITION NO. 05 OF 2019 &
IA NOS. 1423 & 1424 OF 2019

Dated : 29th August, 2019

Present: Hon'ble Mrs. Justice Manjula Chellur, Chairperson
Hon'ble Mr. S. D. Dubey, Technical Member

In the matter of:

Sprang Soura Kiran Vidyut Private Limited … Petitioner(s)
Versus
Andhra Pradesh Electricity Regulatory Commission & Ors. … Respondent(s)

Counsel for the Petitioner(s) : Mr. Hemant Sahai
Ms. Puja Priyadarshini
Ms. Molshree Bhatnagar

Counsel for the Respondent(s) : M.G. Ramachandran, Sr. Adv.
Ms. Poorva Saigal
Ms. Ranjitha Ramachandran
Mr. Shubham Arya
Ms. Tanya Sareen for R.2

ORDER

(PER HON'BLE MRS. JUSTICE MANJULA CHELLUR, CHAIRPERSON)

IA NO. 1423 OF 2019
(Appln. for interim relief)

The Petitioner sought interim directions in terms of this Application.

2. We have heard the submissions of the Petitioner, NTPC/Solar Energy Corporation India Ltd (**SECI**). In spite of service of notice on the Respondents

on main petition, none appeared either in person or through their counsel on behalf of the Respondents except NTPC and SECI.

3. On an earlier occasion, we granted *ex parte ad-interim* directions on 29.07.2019 against Respondent-DISCOM as well as State Regulatory Commission. The relevant portion of the order reads as under:

> *"In that view of the matter, we issue ex-parte Ad-interim direction against Respondent-DISCOM and State Regulatory Commission not to initiate any precipitative/coercive action against the Petitioner including cancellation or termination or deemed/automatic termination of PPA and PSA till such time the Andhra Pradesh State Regulatory Commission decides/issues order pertaining to adoption of tariff, trading margin and approval of procurement of contracted capacity."*

4. Mr. Basava Prabhu Patil, learned senior counsel for the Petitioner and Mr. M.G. Ramachandran, learned senior counsel representing NTPC and SECI submit that the record of proceedings dated 03.08.2019, 17.08.2019 and 24.08.2019 clearly indicate the stand of the Respondent-DISCOMs before the Commission. According to the Petitioner in spite of the interim direction dated 29.07.2019, referred to above, the Respondent-DISCOMs are intending not to

proceed further with the tariff adoption petition pending before it in terms of instructions.

5. We have gone through the record of proceedings. Apparently, all the petitions pending before the Respondent-Commission for adoption of tariff pertains to a tariff and outcome of competitive bidding process in terms of Section 63 of the Electricity Act, 2003 (for short “the Act”)..

6. Apparently, after approval of the capacity by the Respondent, the process of bidding seems to have been commenced. In terms of competitive bidding process, the respective petitioners were the successful bidders and have paid more than Rs.100 Crores each to A.P. Solar Power Corporation Private Limited for implementation of the solar projects in the solar parks. Apart from such investment substantial progress is made so far as establishment of solar plant is concerned.

7. According to the Petitioner, the investment was made at the behest of the representations given by Respondents – NTPC/SECI/A.P. DISCOMS that the adoption of tariff will be obtained from State Commission in a time bound manner. It is submitted at this stage that, if the Respondent-DISCOMS were to withdraw the proceedings pending for approval/adoption of tariff pertaining

to competitive bidding process, the Petitioner would suffer irreparable harm and such action would prejudice the interest of the Petitioner.

8. Though previous interims directions, stated above, were communicated and notice on main petition being served, till date none of the Respondents except NTPC and SECI are before this Tribunal. The proceedings dated 17.08.2019 before the APERC reads as under:

> *"Affidavits have been filed on behalf of (i) M/s SB Energy Solar Private Limited (ii) M/s Sprng Anitra Private Limited & (iii) Ayana Ananthapuramu Solar Private Limited by Sri Hemant Sahai, learned counsel for the three generators and the learned counsel has urged for the reasons stated in the affidavits that dispensing with the process of public hearing, the adoption of tariff etc., may be expeditiously proceeded with. Sri G.V. Brahmananda Rao, learned counsel representing Sri P. Shiva Rao, learned Standing Counsel for AP DISCOMS while seeking further time to get instructions from the State Government also sought for time for filing the response of the utilities to the affidavits filed by the three generators. Hence, the matter is posted for the response of the utilities to the three affidavits and also to report if there are any instructions from the State Government as sought for since long time by the learned Standing Counsel for which purpose the matter will not be adjourned further. Hence, the matter is posted to 24.08.2019."*

The proceedings dated 24.08.2019 reads as under:

> *"Sri P. Shiva Rao, learned Standing Counsel for the utilities requested for further time for filing the response of the utilities to the three affidavits and he has also reported that he has received instructions from the State Government not to proceed further with the petitiion filed by the Southern Power Distribution Company of Andhra Pradesh limited (APSPDCL) in this matter and that he may be granted time for reporting the said instructions in writing to the Commission. Hence, for response of the utilities to the three affidavits of the three generators filed on 03.08.2019 and for reporting the instructions from the State Government said to have been received by Sri P. Shiva Rao, learned Standing Counsel for the utilities in writing, the matter is posted to 31.08.2019."*

9. In the light of the above proceedings, we fail to understand how public hearing is initiated in the adoption tariff, which is an outcome of competitive bidding process. At this stage, we are of the opinion if the PSA read with PPA are pending for consideration before the Respondent-Commission in terms of Section 86(1)(b), the proceedings have to be taken up by the Respondent-Commission in accordance with the Act and the Regulations with reference to settled law pertaining to competitive bidding process under Section 63 of the Act. Respondent-Commission shall not permit the Respondent-DISCOMS to

withdraw the said petition at this stage. We also direct the Respondent-Commission not to hold public hearing since the proceedings pertain to adoption of tariff in a competitive bidding process.

10. Accordingly, the Application is disposed of. Registry is directed to list the Original Petition on ***16.09.2019.***

11. Pronounced in the open court on this the 29th day of August, 2019.

S.D. Dubey
[Technical Member]

Justice Manjula Chellur
[Chairperson]

Dated: 29th August, 2019

REPORTABLE/~~NON-REPORTABALE~~

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